IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-12-2007

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 1640 of 2006
and
M.P. No. 1 of 2007

1. Parasakthi
2. Pichamuthu .. Petitioners/Petitioners

Versus

1. Chidambara Gounder
2. Sarasu
3. Rajammal
4. Indirani
5. Sellamuthu
6. Ramesh
7. Ramasamy Gounder
8. Sellammal .. Respondents/Respondents

Revision under Article 227 of The Constitution of India against the Order dated 31.03.2006 made in I.A.No.2 of 2006 in A.S.No. 3 of 2005 on the file of Subordinate Judge, Attur.

For Petitioners : Mr. T. Murugamanickam
For Respondents : Mr. P.R. Sivakumaran for RR7 and 8

ORDER

The third parties, who have filed I.A. No. 2 of 2006 before the Sub Court, Attur for impleading themselves as parties in A.S. No. 3 of 2005 are the revision petitioners herein. The Plaintiff/7th respondent herein has filed O.S. No. 76 of 2000 on the file of District Munsif Court, Attur for declaration of his title to the suit property and for injunction. The said suit, after contest, was decreed as prayed for on 25.02.2005. Aggrieved by the said decree and judgment dated 25.02.2005, the respondents 1 to 6, 8 herein have filed A.S. No. 3 of 2005 on the file of Subordinate Judge, Attur. Pending the said appeal suit, the petitioners herein have filed the above said application to implead themselves as parties in the appeal, which was dismissed on 31.03.2006, hence, the present revision petition has been filed.

2. Mr. Murugamanickam, learned counsel appearing for the petitioners submitted that the petitioners are daughter and son of the first respondent herein born through his second wife; that the suit property was purchased out of the sale consideration of joint family property in the name of the eighth respondent herein, who is the first

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wife of the first respondent herein and that the petitioners are entitled to get their share in it; that the court below without considering the above facts has erroneously dismissed the application to implead the petitioners as parties in the appeal and prayed for allowing of the revision petition.

3. Mr. Sivakumaran, learned counsel appearing for the respondents 7 and 8 submitted the petitioners are fully aware that the suit was filed by the 7th respondent herein in O.S. No. 76 of 2000 before the District Munsif Court, Attur but they have not chosen to implead themselves as a parties in the suit as they are aware not entitledto any share in it; that the petitioners having allowed the trial court to pass a decree woke up and filed the present application to implead in the first appeal stage, that too, at the instance of the respondents 1 to 6 herein and prayed for dismissal of the revision petition.

4. This Court heard the counsel for both sides and perused the material records. The basic principles to be kept in view is the plaintiff, who is the dominus litis of the proceedings cannot be compelled to contest against a person, against whom, he does not wish to contest. Under Sub-Rule 2 of Rule 10 of Order 1 CPC, the Court may at any stage of the proceedings, either upon or without application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit, be added. The primary meaning of a 'party' is a litigant who has a part to play in the proceedings. A 'necessary party' is one, without whom no order can be effectually made. A 'proper person' is one whose presence is necessary for a complete and final decision of the question involved in the proceedings. Where the impleadment of a person would change the complex of the litigation, his or her presence is neither necessary for the decision or the question involved in the proceedings nor to enable the Court to effectually adjudicate upon and settle the question involved in the case, such person is neither a necessary party nor a proper party. The necessary consideration before the Court while determining the question of impleadment of a party to the proceedings is whether the said party is necessary or proper party and presence of such party before the Court is necessary for complete and effective adjudication of the subject matter. It is the duty of the court, whenever an application for impleadment is filed, to consider the same on the above mentioned principles.

5. In this case, though the court below has not elaborately discussed the above factors, it has come to a right conclusion that the petitioners are not necessary party to be impleaded in the appeal as they have not placed any evidence to show that they are entitled to a share in the suit property, particularly when the respondents 1 to 6 contested the claim made by the seventh respondent herein. Moreover, the implead petition was filed in the first appeal stage. Where a party did not take steps for coming on record on trial stage, bonafides are doubtful and such party cannot be impleaded in the appeal.

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6. In view of the above discussion, the civil revision petition is devoid of merits, liable to be dismissed and accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Subordinate Judge
Sub Court, Attur.

2. The District Munsif,
Attur.

3. The Section Officer,
V.R.Section, High Court, Madras.

1 cc To Mr.D.Shivakumaran, Advocate, SR.71247.
1 cc To M/s.T.Murugamanikkam, Advocate, SR.71347.

CRP (PD) No. 1640 of 2006

ASM(CO)
RVL 10.12.2007

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